

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

July 19, 2004
8:00 p.m.

Council Chambers
Bellevue, Washington

PRESENT: Mayor Marshall, Deputy Mayor Noble, and Councilmembers Balducci, Chelminiak, Davidson, Degginger, and Lee

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:06 p.m. by Mayor Marshall, who presided.

2. Roll Call, Flag Salute

Upon roll call by the City Clerk, all Councilmembers were present. Deputy Mayor Noble led the flag salute.

3. Communications: Written and Oral

Mayor Marshall announced that citizens are not allowed to speak to Council regarding Agenda Item 9, a limited public hearing on the conditional use permit application of Michael's Toyota. Because this is a quasi-judicial matter, Council cannot take comments from the general public about the appeal.

Lori Riordan, Acting City Attorney, explained that quasi-judicial proceedings are matters in which Council makes a decision as to the rights of specific parties under the City's regulations. In these situations, Councilmembers act as judges and must maintain fairness and impartiality. If citizens wish to communicate with the City regarding quasi-judicial matters, they should write, email or call the City Clerk, Myrna Basich. All such communications must be received by the City Clerk by 1:00 p.m. on the Wednesday before the Council meeting in which the matter will be considered.

- (a) Susie Winkowski, manager of Vasa Park Resort on Lake Sammamish, commented on the City's noise ordinance. She explained that the park hosts several hundred company

picnics each summer. She has been able to obtain noise permits for all functions this summer but recently learned that the noise ordinance does not allow permits for Sundays. On Sunday, July 18, the resort received a summons for an amplified noise disturbance, which was delivered by a Bellevue police officer and King County officer. Ms. Winkowski noted the resort has been operating since 1926. She questioned the new emphasis on noise enforcement at the park.

- (b) Terry Person explained that her family is moving from Idaho to Bellevue and they are temporarily staying at Vasa Park Resort in a RV. She and her husband returned from Spokane at 3:30 a.m. on Sunday and slept until approximately 3:00 p.m. that day. She later learned about the citation to the management for amplified noise but said she and her husband did not hear any noise that day.
- (c) David Lersten, an event producer who coordinates events at Vasa Park, said he was surprised by the citation on Sunday. He alleged the complaints are coming from one family that calls the police repeatedly. Mr. Lersten asked Council to approve a temporary permit for the sound until the situation can be resolved.
- (d) Joe Rosmann, president of Surrey Downs Community Club, introduced residents wishing to comment on the City's plan to develop a park on the site of the old school near the district court building. Bill Easterbrook thanked the City for maintaining the park and field, which are highly used by the neighborhood. He asked the City to consider providing playground equipment to replace equipment previously removed.
- (e) Dave Walsen, a youth resident of Surrey Downs, enthusiastically thanked the City for the proposal to make the old school grounds into a city park. He is involved in Crossroads Youth Theatre and has volunteered more than 250 hours for the Bellevue Parks and Community Services Department so far this year. He looks forward to development of the park.
- (f) Stacie Anderson thanked the City for acquiring the old school grounds as park property for Surrey Downs. She thanked Mayor Marshall, Councilmembers Balducci and Chelminiak, King County Councilmember Jane Hague, and Parks Property Manager Lorrie Peterson for their support and work on the acquisition. Ms. Anderson said residents look forward to working with staff, the Parks and Community Services Board, and hopefully the Arts Commission to develop the park.

4. Reports of Community Councils, Boards and Commissions: None.

5. Report of the City Manager

City Manager Steve Sarkozy recalled an inquiry from the Sunset Community Association during the July 6 Regular Session regarding the coordination of projects in West Lake Hills. Dave Berg, Transportation Assistant Director, noted the memo in section 5 of the Council packet summarizing current and upcoming projects. He described staff's activities to coordinate all aspects of the projects including interdepartmental coordination and working with franchise

utilities, outside agencies, and residents. Staff met with the Sunset Community Association in February and April, and the next meeting is targeted for August.

Mayor Marshall asked the City Manager to prepare a management brief on the noise issues at Vasa Park Resort.

6. Council Business

Dr. Davidson attended meetings of the Shared Strategy Subcommittee and the Regional Water Quality Committee.

Ms. Balducci attended meetings of the Disability Board, Firemen's Pension Board, and the Transportation Commission as well as a Factoria Area Transportation Study (FATS) workshop.

Mr. Degginger attended the Planning Commission's annual retreat. He noted the Economic Development Council is changing its name, by-laws, and board structure, which will be discussed during a special meeting on July 22.

Mr. Chelminiak attended the federal Economic Development District meeting and the Surrey Downs neighborhood picnic and parade.

Mr. Lee attended the Surrey Downs picnic and Eastgate Park and Ride grand opening. He met with a delegation from China regarding the privatization of urban development projects.

Deputy Mayor Noble attended meetings of Puget Sound Regional Council's Transportation Policy Board, Eastside Transportation Partnership, and Eastside Human Services Forum.

Mayor Marshall met with the Parks Board Chair and a Planning Commissioner for updates on the groups' activities. She is working with the Mercer Island City Council to encourage approval of an amendment to the I-90 agreement, which will allow HOV lanes on both sides of the bridge.

7. Approval of the Agenda

- ➡ Deputy Mayor Noble moved to approve the agenda, and Mr. Chelminiak seconded the motion.
- ➡ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

- ➡ Deputy Mayor Noble moved to approve the Consent Calendar, with the exception of items (c) and (d), and Mr. Lee seconded the motion.

Mayor Marshall noted Agenda Items (c) and (d) have been removed to allow additional staff work.

- ➡ The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:
- (a) Minutes of June 21, 2004 Study Session
Minutes of June 21, 2004 Regular Session
Minutes of June 24, 2004 Special Meeting
Minutes of June 28, 2004 Extended Study Session
Minutes of July 1, 2004 Special Meeting
Minutes of July 6, 2004 Study Session
Minutes of July 6, 2004 Regular Session
Minutes of July 12, 2004 Extended Study Session
 - (b) Motion to approve payment of claims for the period June 26 through July 16, 2004, and payroll for the period June 16 through June 30, 2004.
 - (c) Resolution No. 7044 authorizing execution of a contract for Fire Department Capital Improvement Program (CIP) project management services with Ronald Seng in an amount not to exceed \$60,000 for a two-year period, with an option to renew the contract for one two-year period for an additional \$60,000.
 - (f) Motion to award Bid No. 0437 for the 168th Avenue SE and SE 14th Street Traffic Calming Project to construct four raised crosswalks with sidewalk and curb ramps, one elongated speed hump, and one stationary radar sign to reduce vehicle speeds to Road Construction NW, Inc., as low bidder in the amount of \$97,534. (CIP Plan No. PW-M-7)
 - (g) Resolution No. 7045 authorizing execution of a consultant agreement with HDR Engineering, Inc., to provide construction inspection services for the 148th Avenue SE roadway project. (CIP Plan No. PW-R-117)
 - (h) Resolution No. 7046 authorizing execution of a settlement agreement and mutual release with Qwest to implement settlement of the City's claim for delay damages on the Richards Road improvement project. (CIP Plan No. PW-R-79)
 - (i) Motion to reject all bids for Bid No. 0430, Water Reservoir Improvements – Electrical Conduit Installation Project, and to rebid at a later date.
 - (j) Maintenance/Non-Professional Services Contracts
 - (1) Resolution No. 7047 authorizing execution of a maintenance agreement in an amount not to exceed \$94,000 with Oliver's Landscape Maintenance to provide vegetation maintenance and litter removal on the City's transportation trails.
 - (2) Resolution No. 7048 authorizing execution of a one-year maintenance agreement and three potential one-year renewals for a potential total

contract amount not to exceed \$419,876.24 with Clearcreek Contractors for removal of accumulated sediments from two regional detention ponds located in Coal Creek.

- (3) Resolution No. 7049 authorizing execution of a one-year maintenance agreement, with an option for three one-year renewals, for a total contract amount not to exceed \$117,165.04 with Total Landscape for removal of vegetation in the constricted channels between Phantom and Larsen Lakes in the Lake Hills Greenbelt area.
- (4) Resolution No. 7050 authorizing execution of a one-year maintenance agreement and three potential one-year renewals for a total potential contract amount not to exceed \$400,000 with Bravo Environmental for surface water pipeline condition assessment.
- (k) Resolution No. 7053 ratifying the signature of the City Manager on the Proposed Settlement Deal Points document regarding Newport Yacht Club and Weinstein v. City of Bellevue and King County, U.S. District Court Case No. C03-25347.

Items pulled at staff's request:

- (c) Resolution No. 7042 authorizing execution of an agreement with Berkley Risk Administrators Company, LLC, to provide workers compensation claims administration services.
- (d) Resolution No. 7043 authorizing execution of an agreement with Evergreen Adjustment Service, Inc., to provide liability claims adjustment services.

9. Public Hearings

- (a) Limited public hearing on the appeal of the Hearing Examiner's decision that the Conditional Use Permit application of Michael's Toyota to establish an automobile dealership within the existing Sunset Village Shopping Center located at 3080 148th Avenue SE be approved with conditions. (File No. 04-100086-LB) *(This is a Process I land use application. Under Process I, the Hearing Examiner is the final decision-maker for the City unless decision is appealed to City Council.)*

Interim City Attorney Lori Riordan explained that this item is a limited public appeal hearing on Hearing Examiner's File No. 04-100086-LB, the application of Michael's Toyota for a conditional use permit (CUP) to establish an auto dealership within Sunset Village Shopping Center. The appeal was filed by Jennifer Robertson, Scott Robertson, and Michael Alford in response to the Hearing Examiner's decision to grant the conditional use permit with conditions. This hearing is limited to the issues decided by the Hearing Examiner after taking testimony during the hearing held on April 22. Respondents to the appeal are the applicant and the Director of the Department of Planning and Community Development.

Ms. Riordan described the procedure for disclosing ex parte communications. If ex parte communications are to be disclosed, the Councilmember should state the name of the person/s with whom the communication occurred, whether the communication was written or oral, and the substance of the communication. If written, the communication should be submitted into the record for this appeal. The other party(ies) should have the opportunity to rebut the substance of the communication between another party or person supporting another party and the Councilmember.

Mayor Marshall asked Councilmembers to disclose any ex parte communications they may have had with the parties to the appeal or others supporting or opposing the application.

Mr. Chelminiak received an email in November 2003, before he was sworn in as a Councilmember, from Scott Robertson alerting him to the prospect of a car dealership in Sunset Village Shopping Center. Mr. Chelminiak's reply addressed whether or not the center could be redeveloped. Mr. Robertson replied to Mr. Chelminiak, but Mr. Chelminiak does not remember the exact wording of that communication. Mr. Chelminiak has since changed internet service provider and does not have a copy of the emails. He knows Jennifer Robertson from having served on the Planning Commission. He attended a holiday party at their home in 2003 but the matter was not discussed.

Mr. Chelminiak and Ms. Balducci attended the Spiritridge Homeowners Association meeting on May 12, in which some residents asked questions about the shopping center. Both Councilmembers explained they were unable to discuss the matter.

Ms. Balducci confirmed that she attended the Spiritridge Homeowners Association meeting and Mr. Chelminiak accurately described the communication. Ms. Balducci said she had two or three brief conversations, before and after taking office as Councilmember, with a friend who lives in Somerset. The friend said some residents were interested in seeing the redevelopment of the shopping center and that an appeal might be filed. Ms. Balducci said there was no substantive discussion, but she might have received an additional email from the person. She recalls receiving a memo written by Jennifer Robertson but did not read it and did not retain the copy.

Mayor Marshall described an encounter at Tully's in which a physician introduced himself to her and asked about the procedures. She does not recall his name but she told him the matter was quasi-judicial and she could not discuss it.

Continuing with the rules, Ms. Riordan said any party may submit written presentations based on the record made before the Hearing Examiner. The City Attorney is required to review the presentations and remove any information in the documents that is not a part of the Hearing Examiner's record.

Ms. Riordan said the appellants have raised three procedural issues in the form of motions to Council. The first motion requests that the record made before the Hearing Examiner be supplemented by either the Council agreeing to hear the new evidence or remanding the matter

to the Hearing Examiner to take testimony regarding this new evidence. The second motion is to continue the hearing date until September. The final motion requests additional time for oral argument at the hearing.

Ms. Riordan suggested Council take argument on the first two motions. Appellants will be given a total of five minutes to argue both for supplementation of the record and for a continuance. Appellants can reserve some of this time for rebuttal. Respondents will also be given a total of five minutes to present arguments on both motions.

Ms. Riordan explained that the appellants timely submitted a written presentation in the form of a motion to submit additional evidence. The respondents have submitted written opposition to the appellants' request. [Both documents are provided to Council on yellow paper.] Council's options are to: 1) grant the motion and agree to take additional evidence, 2) deny the motion, or 3) grant an alternative motion and remand the matter to the Hearing Examiner to take new evidence.

The motion to continue the hearing date for this appeal and the respondents' opposition to this motion are provided to Council on blue paper. If Council decides to permit supplementation of the record, the appellants request that the hearing for the new evidence be continued to a date in September. If Council decides to accept additional evidence, it will need to decide the motion for continuance now. If Council decides to remand the matter to the Hearing Examiner, it may deny the motion or it may require that the Hearing Examiner's supplemental hearing is scheduled for September or later.

Upon conclusion of argument for the first two motions, Council will need to rule on the motions in sequential order. If Council decides to remand the matter to the Hearing Examiner, a motion will be necessary to establish the scope of the remand hearing. That motion should be limited to the issues upon which Council is convinced that additional evidence is necessary to make a decision on the CUP appeal. Ms. Riordan advised Council to address the first two motions at this time.

Mayor Marshall invited the parties to present argument on the first two motions. Jennifer Robertson said the appellants would like to reserve 30 seconds of their five minutes for rebuttal.

Appellants:

Jennifer Robertson said she, Scott Robertson, and Michael Alford, appellants, are concerned citizens regarding the development of Sunset Village Shopping Center. She explained that after the Hearing Examiner's hearing, Mr. Robertson was contacted by several tenants of Sunset Village. As a result of these discussions, he obtained additional information about the well-being of remaining small businesses in the center. This information is directly contrary to that provided to the Hearing Examiner by the applicant.

Ms. Robertson said Mr. Robertson also received documents establishing that the site plan submitted by the applicant and approved by the Hearing Examiner cannot be developed as promised. Part of the pedestrian walkway and parking area will be unavailable for development.

Ms. Robertson said the issue of the financial well-being of other businesses in the shopping center was important enough to the Hearing Examiner to initiate an inquiry from him to staff. Unfortunately staff did not provide the Hearing Examiner with any information on this issue. Ms. Robertson noted conflicting testimony as to the viability of these businesses. She alleged that testimony on behalf of the applicant contained material misrepresentation that affected the outcome of the case. The evidence the appellants wish to add will establish that this testimony was false or misleading. Ms. Robertson said the applicant receives monthly sales reports from businesses at the shopping center. It was not new information to the applicant but is new information to the appellants.

Ms. Robertson said two declarations by Scott Robertson contain information he learned on this issue, including business records that establish the applicants' misrepresentation. If Council desires to supplement the record, it can omit these two declarations but it also has authority under Resolution No. 5097 to request the complete records from the applicant. Because the issue involves putting several small business out of business, and the applicant previously had the information, Ms. Robertson asked Council to order that the record be supplemented or that the matter be remanded to the Hearing Examiner on this issue.

Ms. Robertson explained that the evidence the appellants wish to add was in the possession of the applicant prior to the hearing before the Hearing Examiner. It establishes that the site plan is incorrect and that the pedestrian walkway and parking cannot be built as promised. Ms. Robertson alleged that the applicant's representations regarding the site plan resulted in the Hearing Examiner receiving misleading information of material value. She feels this new information should be considered by Council or the Hearing Examiner.

Ms. Robertson summarized that this land use decision is too important to allow this information to remain hidden and unknown. She noted the appellants, as private citizens, had no way of obtaining this information prior to the hearing. Ms. Robertson asked Council to continue the hearing to mid-September or later.

The City Clerk indicated 54 seconds remaining for the appellants.

Respondents:

Sarah Mack, Mentor Law Group, spoke on behalf of Michael's Toyota. She explained that Michael's Toyota opposes the request to continue the hearing in this matter. The application has been in the hands of the City for a full six months after having been deemed complete. The City conducted a thorough evaluation of the application, held one public meeting and a hearing before the Hearing Examiner, and has undergone scrutiny by affected City departments. Ms. Mack commended the process and feels Michael's Toyota is entitled to a decision.

Regarding the new evidence discussed by the appellants, Ms. Mack said the Hearing Examiner was clear at the hearing regarding the opportunity for presenting evidence into the record, and all of the issues were on the table at that time. If Council chooses to hear the evidence, Michael's Toyota is prepared to rebut the information. Ms. Mack said two representatives of the company are in attendance and prepared to testify tonight if needed. She characterized the appellants'

argument as hearsay testimony from Mr. Robertson. Michael's Toyota staff are prepared to show the site plan with the location for an espresso business.

Rebuttal:

Ms. Robertson reiterated that the information Council is being asked to consider or remand to the Hearing Examiner has at all times been in the possession of the applicant. She feels any potential delay at this point is due to the applicant's misrepresentation or hiding of information from the Hearing Examiner. Ms. Robertson said the evidence relates to the financial well-being of other businesses at the shopping center and is relevant in terms of whether the project causes material detriment. She said the evidence is not hearsay and additional records could be obtained to establish the appellants' allegations in this matter.

Mayor Marshall reviewed three options for Council action on the first motion: 1) grant the motion and take additional evidence at this time, 2) grant the motion and remand the matter to the Hearing Examiner to supplement the record with additional evidence, or 3) deny the motion to supplement the record.

- ➡ Deputy Mayor Noble moved to deny the appellants' motion to supplement the record regarding the application of Michael's Toyota, and Dr. Davidson seconded the motion.

Responding to Councilmember Chelminiak, Ms. Riordan said adjustments to site plans under administrative conditional use permits are allowed if they fit within the criteria for the use. Carol Helland, Land Use Director, confirmed it is not uncommon for site plan changes to occur.

Deputy Mayor Noble explained he would not hesitate to hear additional substantial material information. However, the current financial well-being of the shopping center's tenants is not relevant to their well-being under the applicant's proposal.

Responding to Mr. Lee, Legal Planner Kate Berens said two types of evidence are involved in this matter. The first is the declaration of Mr. Robertson, which was not available at the public hearing. Regarding the site plan, the document on which the appellants' argument is based was not part of the public record.

Ms. Balducci is open to hearing the evidence and will not support the motion.

- ➡ The motion to deny the appellants' motion to supplement the record regarding the application of Michael's Toyota carried by a vote of 5-2, with Ms. Balducci and Mr. Degginger dissenting.

Mayor Marshall asked Council to consider the second motion for a continuance of the hearing date to September.

- ➡ Deputy Mayor Noble moved to deny the appellants' motion for a continuance, and Dr. Davidson seconded the motion.

- The motion to deny the appellants' motion for a continuance carried by a vote of 7-0.

Ms. Riordan explained the third motion requesting additional time for argument, which according to Council's Rules is to be decided by the Mayor. The Mayor may grant the request for an additional 15 minutes per side, grant a lesser amount of time, or deny the motion.

Mayor Marshall granted the motion, modified to allow five additional minutes per side for argument. This will give each side a total of 20 minutes for argument and rebuttal.

Ms. Robertson said the appellants would like to reserve three minutes for rebuttal.

Ms. Riordan explained the limited hearing process. The Director of Planning and Community Development or his staff will present a report describing the procedural history of the application. After Council opens the hearing, the parties will have the opportunity to present oral argument based on the Hearing Examiner's record. Council may ask questions of any party, staff, or any other person regarding matters contained in the record. New material not contained in the record made before the Hearing Examiner may not be presented. After all the argument is presented and Council has had an opportunity to ask questions, Council will have the opportunity to deliberate and render a decision tonight or at a subsequent meeting. The appellants bear the burden of proof.

Council may grant the appeal or grant the appeal with modifications if the appellants have carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantial evidence. In all other cases, the appeal shall be denied. Council shall accord substantial weight to the Hearing Examiner's decision. Evidence is material if there is a reasonable probability that had it been appropriately considered by the fact finder, the result of the proceeding would have been different. Evidence is substantial when there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

- Dr. Davidson moved to open the limited public hearing, and Mr. Noble seconded the motion.

- The motion to open the limited public hearing carried by a vote of 7-0.

Carol Saari, Planner, described the conditional use permit (CUP) application of Michael's Toyota for a new automobile dealership within the existing Sunset Village Shopping Center. The proposal covers 70,000 gross square feet and includes new landscaping, internal walkways, renovation of the auto dealership space, and painting the entire shopping center. The shopping center is located at the intersection of 148th Avenue SE and SE Eastgate Way, with easy access to I-90. The closest single-family neighborhoods are Robinswood, one-half mile to the north, and Spiritridge, two-thirds of a mile to the east. The existing shopping center is a one-story development on approximately 20 acres. It was built in 1963 under King County's regulations and annexed to the City in 1966. In 1968, it was rezoned from King County commercial zoning to the City's community business (CB) zoning. Ms. Saari displayed an artist's rendering of the proposed completed project.

Appellants:

Ms. Robertson said one of the reasons she moved to Bellevue was its well-run, responsible government and good land use planning. She became involved with the Planning Commission because she wanted to be part of promoting this good government and land use planning. However, she feels the Michael's Toyota application does not reflect good government or good planning. Ms. Robertson said the proposal does not comply with the Land Use Code or Comprehensive Plan.

Ms. Robertson introduced two issues: 1) whether proper public notice was provided by the applicant in the form of signs, and 2) whether staff's actions at the Hearing Examiner level created an appearance of fairness problem by tainting the proceedings with an air of undue influence. She referred Council to her brief for more details on these issues. Ms. Robertson said the City's notice requirement requires two signs posted on the property facing two different streets. She noted the sign at the main entrance was missing, which was brought to the attention of staff and the applicant. The applicant said the sign was up at some point in mid-March, but Ms. Robertson said she and no one she knows ever saw the sign. Ms. Robertson said the failure to provide adequate public notice presents a due process problem and requires the application to begin the process again.

Regarding the appearance of fairness doctrine, Ms. Robertson said the question is not whether there was an actual impropriety but whether the public could reasonably believe the Hearing Examiner was unduly influenced by a party. The Hearing Examiner is paid by the City and works with staff. Ms. Robertson alleged that City staff went beyond providing an objective recommendation. She alleged the applicant did little analysis on its own in response to public criticism of the project, and City staff provided a response and presentation at taxpayers' expense. She said staff shared the City's brief with the applicant via email prior to the filing deadline. Ms. Robertson feels this taint of undue influence results in an appearance of fairness violation, even if no actual influence occurred. She said the Hearing Examiner ignored relevant Comprehensive Plan policies raised by the public that were not addressed by staff. Ms. Robertson urged Council to restart the process from the beginning.

Turning to the main arguments for the appeal, Ms. Robertson said the record demonstrates that the Hearing Examiner's decision was wrong and should be reversed. She alleged the Hearing Examiner failed to properly weigh unrefuted expert witness testimony by two commercial real estate brokers about the detriment this application will create for existing Sunset Village businesses and the surrounding neighborhood. This testimony was not refuted by anyone but was dismissed by the Hearing Examiner. Ms. Robertson said the evidence was substantial and material and should have resulted in the denial of the application. She encouraged Council to read her full brief for more on this and additional issues.

Ms. Robertson said the CUP application is inconsistent with the Comprehensive Plan. She said the Hearing Examiner erred in ignoring or misinterpreting these policies and his decision must be reversed. The Department of Planning and Community Development argued, and the Hearing Examiner agreed, that Comprehensive Plan policies do not apply to this application. Ms. Robertson said staff's position on this does not include any citation to authority. PCD staff

maintain that policies under the general heading of “Commercial” apply only to neighborhood businesses.

Ms. Robertson described what she calls a circular argument made by staff and adopted by the Hearing Examiner. Sunset Village is zoned community business, which is consistent with the Comprehensive Plan. Ms. Robertson agrees. The argument continues that since auto sales are a conditional use under CB zoning, they are automatically deemed consistent with the Comprehensive Plan. Ms. Robertson said this makes the CUP criteria, which requires a showing of consistency with the Comprehensive Plan, completely meaningless. If every conditional use were automatically deemed consistent with the Comprehensive Plan, there would be no reason to conduct a CUP analysis. However, consistency with the Plan is required. Ms. Robertson said the Hearing Examiner erred by adopting the circular reasoning without citation or authority. She urged Council to reject this argument as nonsense.

Ms. Robertson again noted her discussion of many issues in her brief. She focused on one policy particularly relevant to this application, which is contained under the Commercial heading in the Eastgate Subarea Plan. Policy SEG-6 states: “Limit retail expansion to serve primarily neighborhoods and community retail needs.” The discussion section under this policy explains how it should be implemented and reads in part: “Retail services should serve area residents but not become regional shopping centers.” Ms. Robertson said the applicant, staff, and Hearing Examiner all agreed that this change of use to an auto dealership is a regional draw, which is forbidden by the referenced policy. She said the application should have been denied because the CUP criteria requires consistency with the Comprehensive Plan.

Ms. Robertson said the Land Use Element, Economic Element, and Citizen Participation Element of the Comprehensive Plan indicate the application should have been denied. She asked Council to correct the Hearing Examiner’s error and reverse the decision. Ms. Robertson thanked Council and yielded to Scott Robertson to address additional issues.

Mayor Marshall noted nine minutes remaining, six minutes for continued argument and three minutes for rebuttal.

Mr. Robertson introduced himself as a commercial real estate broker living in Somerset Highlands with an office in downtown Bellevue. Bellevue has been his home for more than 30 years. Mr. Robertson noted CUP criteria that the conditional use must be consistent with the Comprehensive Plan and not materially detrimental to uses or property in the immediate vicinity. He questioned the City’s embrace of this change in use, which significantly diminishes the livability of East and South Bellevue. He feels the project diminishes the value of residential real estate in and around the Eastgate subarea, which is disallowed by the Comprehensive Plan as well as Element D of the CUP application criteria.

Mr. Robertson said the subarea focus and Land Use Element of the Comprehensive Plan state that the stability of established neighborhoods is often perceived as a measure of quality. The City’s subarea plans, written with direct citizen involvement, are a key element in maintaining stable land use patterns.

Mr. Robertson said City staff and the applicant maintain that Land Use and Commercial headings in the subarea plan apply only to neighborhood business zoning and not to community business zoning. Policy SEG-2 (Land Use heading) clarifies that: "Retail areas are intended to serve primarily local needs." Mr. Robertson said Michael's Toyota will serve regional needs. He said a recent rezone within the Eastgate Subarea will ultimately allow an additional 5,000 square feet of office space to be built, which will bring approximately 3,000 new transients into Eastgate. The policy does not differentiate commercial zones within the subarea.

Mr. Robertson said existing tenants in the shopping center remain due to binding leases and capital investment in the premises. He read from the hearing transcript in which the Hearing Examiner noted a CUP criteria stating a project should not be detrimental to uses in the vicinity. Staff responded to the Hearing Examiner that an analysis of this type was not conducted. Mr. Robertson said existing businesses in the center have been suffering. Most of the businesses survive based on traffic generated by American Woman health club. The club generates 500-700 trips per day, or 5,000 trips per week, which is half of the 10,000 trips per week previously generated by a grocery store in the center. Michael's Toyota will generate 10 percent of the number of trips generated by a grocery anchor tenant. Mr. Robertson feels the businesses will not be supported by the reduced number of visitors to the center. He noted the espresso business will be relocated.

Mr. Robertson expressed concern about precedence if this approval is allowed to stand. He fears additional CB centers will convert valuable retail space in neighborhood locations into regional auto facilities. Although staff maintains that concomitant agreements for shopping centers prevent additional auto businesses, Mr. Robertson said neither Kelsey Creek or Eastgate Plaza have any protection from this type of change in use.

Mr. Robertson discussed comments by East Bellevue Community Councilmember Jim Eder to the Hearing Examiner. Mr. Eder stated that the reduction of retail space in Sunset Village means residents will have to travel farther for services, which is contrary to the transportation objective of reducing traffic.

At 9:31 p.m., Mayor Marshall declared a brief recess. The hearing resumed at 9:38 p.m.

Respondents:

Kate Berens, Legal Planner, represented the Director of the Department of Planning and Community Development in opposition to the appeal. Responding to the appellants' argument regarding proper public notice, Ms. Berens said the Land Use Code requires notice in three ways: 1) mailed notice to property owners within 200 feet of the site, 2) published notice of the application and PCD Director's recommendation, and 3) two signs posted along the two street frontages of the site. She said there was always at least one sign posted at the Sunset Village site, although staff was aware that a second sign had fallen over at some point. The sign was reinstalled in March. Ms. Berens said there is no indication that public notice was defective in any way.

Regarding the appearance of fairness issue, Ms. Berens said the appearance of fairness doctrine does not apply to the PCD Director in this case. In a Process I decision, the Director analyzes the application and makes a recommendation about whether it is consistent with the Land Use Code. Staff's analysis resulted in a recommendation to grant the application. The analysis and recommendation were presented to the Hearing Examiner. Ms. Berens said the appearance of fairness doctrine applies to the Hearing Examiner and City Council, and there have been no allegations regarding the Hearing Examiner or Councilmembers.

Regarding consistency with the Comprehensive Plan, Ms. Berens said the staff report and the response to the appeal address consistency with Comprehensive Plan policies. One issue of debate is whether specific Comprehensive Plan policies referring to shopping centers apply to Michael's Toyota's proposal. Staff determined that shopping center guidelines do not apply to this application. The Comprehensive Plan includes policies regarding neighborhood shopping centers, which are implemented through zoning actions. However, the Sunset Village site is zoned community business (CB) and is not a neighborhood shopping center. Ms. Berens said the CB zoning is appropriate given the center's proximity to I-90 and surrounding businesses, offices, and hotels. She noted retail auto sales is an allowed use through the CUP process, subject to site-specific impacts and mitigation measures, in CB districts.

Ms. Berens said the appellants' position that the application is materially detrimental to adjacent uses and properties is based on the argument that the proposal reflects a change of use from a grocery store. She clarified the proposal is a change from vacant space to retail auto sales, which should be the starting point of any analysis. The appellants advocate a specific economic analysis for other tenants in the center. However, this type of analysis is not typically conducted. Ms. Berens said the staff report addressed the materially detrimental criterion with a focus on traffic, parking, noise, glare, and aesthetic impacts. She said no tenants submitted written or oral communications regarding economic impacts from the Michael's Toyota proposal. Ms. Berens said speculation by the appellants regarding a potential impact is not sufficient to warrant granting of the appeal.

Responding to Mayor Marshall, the City Clerk indicated 11 minutes remaining.

Ms. Mack introduced Bruce Broadus and David Broadus (owners of Michael's Toyota), Erik Paulson (General Manager), and Dick Hamlin (representing the property owner). Ms. Mack said Michael's Toyota agrees with City staff's arguments and presentation. She said references to individual Comprehensive Plan policies presented out of context to support a position are often used in land use matters. The appellants' argument rests on a failure to understand that the Comprehensive Plan is the first building block in a land use hierarchy of guidelines and regulations. Zoning and development regulations are the next level of policies upon which City staff conducts its review.

In reference to the appellants' claim regarding the absence of citation to authority, Ms. Mack said the state Regulatory Reform Act passed in the 1990s (RCW 36.70B.030) directs the City to use adopted development regulations for individual project reviews. In the absence of adopted development regulations, the Comprehensive Plan provides direction. Each project review represents a site-specific determination about whether a particular use can be made compatible

with other uses in the vicinity. Responding to a comment by Mr. Robertson, Ms. Mack said a conditional use permit does not set precedent but instead represents a site-specific application of the decision criteria to a particular use. She emphasized that the grocery store has been gone for some time.

Ms. Mack explained that the City cannot force a property owner to lease space to any particular type of business or tenant. She acknowledged that many residents would like a grocery store in the vacant space, and some may wish the center was zoned as neighborhood business (NB) but it is not. Ms. Mack said nothing in the record undermines the Hearing Examiner's findings and conclusions. She asked Council to deny the appeal.

Rebuttal:

Ms. Robertson agreed the CUP application is site-specific and the Comprehensive Plan provides a master blueprint. However, if land use development regulations require an analysis for consistency with the Comprehensive Plan, state law and the recent Lakeside case indicate the analysis must be conducted and consistency must be present for the application to be approved.

Mr. Alford reminded Councilmembers that this is their decision as elected officials. He asked them to consider the impact for thousands of residents if the project is approved. He feels alternative development of the site would be more beneficial for residents.

Mayor Marshall indicated the allotted time had elapsed.

- ➡ Deputy Mayor Noble moved to close the public hearing, and Mr. Degginger seconded the motion.
- ➡ The motion to close the public hearing carried by a vote of 7-0.

Referring to the Comprehensive Plan map adopted in 1993, Dr. Davidson noted a community business (CB) designation for the Sunset Village property.

Mr. Degginger thanked the appellants and respondents for their presentations.

- ➡ Councilmember Degginger moved to continue the matter to July 26 to allow time for Council to thoroughly review the legal briefs and the record for this case. Mr. Noble seconded the motion.

Mr. Chelminiak referred to staff's determination that policies LU-17 and LU-28 do not apply in this matter.

- ➡ At 10:02 p.m., Mr. Noble moved to extend the meeting to 10:30 p.m., and Mr. Degginger seconded the motion.
- ➡ The motion to extend the meeting to 10:30 p.m. carried by a vote of 7-0.

Continuing, Mr. Chelminiak noted nearby multifamily development as well as the surrounding R-5 zoning and questioned the relevance of LU-17 and LU-28. Ms. Berens said LU-17 regarding the protection of residential areas from the impacts of non-residential uses of a scale not appropriate to the neighborhood could apply. However, the analysis on page 50 points out that the immediate vicinity of Sunset Village provides an appropriate buffer between the center and residential areas.

Responding to Mr. Chelminiak, Ms. Berens said Michael's Toyota will generate 54 fewer trips during the evening peak period than the previous grocery store.

☛ The motion to continue the matter to July 26 carried by a vote of 7-0.

Mayor Marshall thanked everyone for their participation.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

(a) Regional Affordable Housing Program

- (1) Resolution No. 7051 authorizing execution of an Interlocal Agreement with King County regarding the establishment of a Regional Affordable Housing Program (RAHP) fund that distributes the local portion of SHB 2060 revenue in a manner consistent with local and countywide housing needs and policies.
- (2) Resolution No. 7052 authorizing execution of an Interlocal Agreement with King County regarding modifications to the HOME Investment Partnerships Program to expand the representation by participating cities on the Joint Recommendations Committee (JRC) from five to seven and to set a rotation schedule on the JRC for Auburn, Bellevue, and Kent.

Planning Director Dan Stroh explained that SHB 2060, adopted by the state legislature two years ago, provides a new funding source for affordable housing. Revenues generated through a document recording fee on real estate transactions are split between the state and local jurisdictions. Mr. Stroh requested Council action on Resolution No. 7051 authorizing the execution of an interlocal agreement with King County to establish the Regional Affordable Housing Program (RAHP) which will distribute low-income housing funds provided by SHB 2060. Resolution No. 7052 authorizes the execution of an interlocal agreement with King County to expand the Joint Recommendations Committee associated with the HOME Investment Partnerships Program. The King County Council has adopted both interlocal agreements and they are in the process of being ratified by participating cities.

Diane Carlson, Director of Intergovernmental Relations, recalled previous Council direction to staff to work with cities, King County, and ARCH (A Regional Coalition for Housing) to evaluate the representation on the JRC. As a result, King County gave up one seat and cities

gained an additional two seats. Bellevue will share two seats with three other cities on a rotating basis. The seats can be occupied by either an elected official or high-level staff member. Mr. Stroh is currently serving for Bellevue.

- ➡ Deputy Mayor Noble moved to approve Resolution No. 7051 and Resolution No. 7052, and Mr. Degginger seconded the motion.

Responding to Mr. Lee, Mr. Stroh said there is no alternative for Bellevue to directly receive and distribute funds provided by SHB 2060, except through participation in the interlocal agreements.

- ➡ The motion to approve Resolution No. 7051 and Resolution No. 7052 carried by a vote of 7-0.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session

- ➡ Mr. Noble moved to extend the meeting to 11:00 p.m., and Mr. Chelminiak seconded the motion.

- ➡ The motion to extend the meeting to 11:00 p.m. carried by a vote of 7-0.

Mayor Marshall announced recess to Executive Session to continue discussion.

16. Adjournment

At 10:53 p.m., Mayor Marshall declared the meeting adjourned.

Myrna L. Basich
City Clerk

kaw